1 2	UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
3	SUMMARY ORDER
4 5 6 7 8	THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.
9 10 11 12	At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 9th day of August, two thousand and six.
13	PRESENT:
14 15	HON. AMALYA L. KEARSE, HON. ROBERT D. SACK,
16	<u>Circuit Judges</u> ,
17	HON. TIMOTHY C. STANCEU,*
18	<u>Judge</u> .
19	
20	CARMEL CENTRAL SCHOOL DISTRICT,
21 22	Plaintiff-Counter- Defendant-Appellee,
23	- v - No. 05-4170
24 25	<pre>V.P., a student, by her parents, Mr. &amp; Mrs. G.P.,,</pre>
26 27	<pre>Defendant-Counter-</pre>
28	

 $<sup>^{\</sup>ast}\,$  Of the United States Court of International Trade, sitting by designation.

Appearing for Appellant: Salamon Davis (as substitute counsel for Rosalee Charpentier),
New York, NY.

Appearing for Appellee: Raymond G. Kunts, Kuntz, Spagnuolo,
Scapoli & Schiro, P.C. (Jeffrey Schiro, of counsel), Bedford
Village, NY.

Appeal from the United States District Court for the Southern District of New York (Colleen McMahon, <u>Judge</u>).

8

10

11 12

13

14

15

16

17

18 19

20

21

22

23

24

25

26

27

28

29

30 31

32

33

34

35

36

37

38

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of district court be, and it hereby is, AFFIRMED.

Insofar as the district court concluded that 20 U.S.C. § 1412(a)(10)(C)(ii) bars the parents from recovering a tuition reimbursement when a child has not previously received special education services from a public agency, the district court was in error. See Frank G. v. Board of Education of Hyde Park, No. 04-4981, --- F.3d ---, 2006 WL 2077009, 2006 U.S. App. LEXIS 19029 (July 27, 2006).

We nevertheless affirm the judgment of the district court on the basis of the alternative grounds upon which it relied, viz., that the defendants are not equitably entitled to tuition reimbursement because the evidence in the record shows -- and the defendants' Local Rule 56.1 counter-statement does not point to evidence in the record disputing -- that the defendants failed to give the school district adequate notice of their child's disabilities or to cooperate sufficiently in developing an individualized education plan ("IEP"). See M.C. ex rel. Mrs. C. v. Voluntown Bd. of Educ, 226 F.3d 60, 68 (2d Cir. 2000) (explaining that "courts have held uniformly that reimbursement is barred where parents unilaterally arrange for private educational services without ever notifying the school board of their dissatisfaction with their child's IEP"); Frank G., 2006 WL 2077009, at \*18, 2006 U.S. App. LEXIS 19029, at \*55 (citing M.C. and reaffirming that "[s]eparate and apart from subsection 1412(a)(10)(C)(ii), we have held that it is inequitable to permit reimbursement" when parents have not timely requested such services).

1 2	For the foregoing reasons, the judgment of the District Court is hereby AFFIRMED.
3 4	FOR THE COURT: ROSEANN B. MACKECHNIE, Clerk
5 6	By: